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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/825,609	04/03/2001	Earle Harry Sherrod	659/695	3279

757 7590 01/26/2005

BRINKS HOFER GILSON & LIONE  
P.O. BOX 10395  
CHICAGO, IL 60610

EXAMINER

REICHLE, KARIN M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/825,609	SHERROD ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Karin M. Reichle	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3,6,9-14 and 18-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,6,9-14 and 18-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Specification***

#### ***Description***

1. The disclosure is objected to because of the following informalities: The Summary of the Invention section, i.e. a description of the invention of the claims, and the invention of the claims is no longer commensurate, see MPEP 608.01(d) and 1302.01. For example, where is a continuous water insoluble fluid impermeable delay layer set forth in this section?

Appropriate correction is required.

### ***Claim Language Interpretation***

2. The terminology “substantially affect the flow”, “substantial change to flow direction” and “partially inhibit the flow of fluid” is defined as set forth on page 10, line 16-page 11, line 6. The terminology “fluid impermeable” is interpreted in light of the specification at page 11, lines 15-20. With respect to the terminology “continuous”, the American Heritage Dictionary defines such as “Extending or prolonged without interruption or cessation, unceasing”. Also note Applicant’s remarks bridging pages 7-8 of the 10-15-02 response. With regard to the terminology “pore”, in light of the paragraph bridging pages 6-7 of the specification, such is interpreted to include both interstices of fibrous materials as well as apertures of film materials. The terminology “absorbent garment” is defined as set forth on page 4, lines 16-25.

***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1-3, 6, 9, 12-14 and 18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Unicharm EP '110 in view of Matsuda '054.

With regard to claims 1-3, 6, 9, 12-14 and 19-22, see Figures 4, 6B, 7B, 9, col. 1, lines 8-48, col. 2, lines 13-43, col. 4, lines 13-15 and 43-44, col. 5, lines 6-11, col. 6, lines 3-8, 24-27 and 54 et seq, col. 7, lines 31-39, col. 8, lines 30-39, col. 9, lines 40-42, col. 10, lines 1-8, col. 11, lines 28, et seq and col. 12, lines 13-22 of Unicharm '110, i.e. the body facing outer surface or cover layer is 21, the garment-facing outer surface or cover layer is 22, 31, 41, the absorbent layer is 23. Therefore, the Unicharm sanitary napkin includes all the claimed structure except for a continuous fluid impermeable delay layer (see claim language interpretation section supra) as claimed in the last three sections of claims 1, 12 and 19, claims 2-3, the last two lines of claim 6 and claims 13-14. It is again noted that Unicharm teaches that it is desirable for the removable or replaceable insert or napkin to entirely absorb the received fluid allowing continuous usage of the undergarment underneath or absorb the primary portion of the fluid with any remaining fluid passing to the absorbent undergarment underneath through layer 22, 31 or 41 rather than leaking from the sides of the pad, and thereby, of the undergarment. Also note paragraph 67 thereof again. Also, see Matsuda at the Figures, col. 1, line 1, col. 1, lines 2-7, col. 1, line 26-col. 2, line 26, i.e. also teaches a sanitary napkin for absorbing fluid which not only includes a body facing outer surface or cover layer which is the top portion of 11 and a garment-facing outer surface or cover layer which is the bottom portion of 11 but also includes absorbent layer(s) which is at

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least one of the layers 8-8a in combination with underlying continuous fluid impermeable delay layer(s) as claimed(see claim language interpretation section supra and col. 2, lines 18-26 and col. 1, lines 30-41) which is at least one of 9-9b to utilize the absorbing capacity of the absorbing layer(s) more effectively, i.e. more fully. Therefore, to employ a absorbent layer(s)/delay layer(s) combination as taught by Matsuda on the Unicharm device would be obvious to one of ordinary skill in the art in view of the recognition that such a feature would more effectively and fully utilize the absorbing capacity of the absorbing layer(s) such that the insert would be more capable of entirely absorbing the received fluid allowing continuous usage of the undergarment underneath or of absorbing more of the fluid before passing a lesser quantity of remaining fluid to the absorbent undergarment underneath and the desirability of such by Unicharm. With regard to claim 18, the prior art combination teaches an uppermost absorbent layer, i.e. the intake layer, i.e. see the layer 8 in Matsuda, and an underlying absorbent layer, i.e. the absorbent layer, i.e. see layer 8a in Matsuda.

5. Claims 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Unicharm '110 and Matsuda '054 and further in view of Poulsen '379.

The device as taught by Unicharm and Matsuda includes at least a first and a second absorbent layer with the second absorbent layer positioned between the at least one delay layer and the first absorbent layer but does not teach each primary surface of the first absorbent layer having a surface area less than the surface area of each primary surface second absorbent layer, e.g. the first absorbent layer is smaller than the second, as claimed in claim 10. However see Poulsen '379 at the Figures and col. 2, lines 53-54 and 62-66, i.e. interchangeability of equal sized absorbent layers with those of increasing width from the body facing surface to the

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garment facing surface. To make the equal sized absorbent layers of the prior art absorbent layers which increase in width from the body facing surface to the garment facing surface, i.e. a first absorbent layer which is smaller than the second absorbent layer, instead would be obvious to one of ordinary skill in the art in view of the interchangeability as taught by Poulsen. It is further noted that such a layer configuration would also provide a z-axis contour which is shaped more complementary to the crotch area of the body where sanitary napkins are worn.

### ***Response to Arguments***

6. Applicant's remarks have been considered but are either deemed moot in that the issue discussed has not been reraised or are deemed not persuasive in light of the objections and rejections *supra*.

### ***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any new grounds of rejection were necessitated by the amendments to claims 1, 9, 12, 19 and the addition of new claims 21 and 22.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (571) 272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Karin M. Reichle  
Primary Examiner  
Art Unit 3761

KMR  
January 18, 2005